



STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

Marinette County Department of Human Services, Petitioner

vs.

██████████ Respondent

DECISION

Case #: FOF - 175106

Pursuant to petition filed June 21, 2016, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Marinette County Department of Human Services to disqualify ██████████ from receiving FoodShare benefits (FS) one year, a hearing was held on Thursday, August 4, 2016 at 10:15 AM at Marinette, Wisconsin.

The issue for determination is whether the Respondent committed an Intentional Program Violation (IPV).

NOTE: The record was held open to give the county an opportunity to submit complete copies of Exhibits 3, 4, 5, and 6.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

Marinette County Department of Human Services
By ██████████, Fraud Investigator
Wisconsin Job Center, Suite B
1605 University Drive
Marinette, WI 54143

Respondent:

██████████
██████████
██████████

I

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. The Respondent (CARES # ██████████) is a resident of Marinette County.

2. On July 13, 2011, the Respondent completed an on-line ACCESS application in which she reported having no employment income. The application contained a penalty warning, advising the Respondent that she could be disqualified from the FoodShare program for providing false information. The Respondent electronically signed the application, certifying under penalty of perjury that the information she provided was correct and complete and that she understood the penalties for providing false information or breaking the rules. (Exhibit 3)
3. On January 4, 2012, The Respondent completed an on-line renewal and completed her interview on that same day. (Exhibit 8)
4. On January 5, 2012, Marinette County Department of Human Services (the agency) sent the Respondent an application summary, in which the Respondent reported no changes in income. The Respondent electronically signed the renewal certifying under penalty of perjury that the information she provided was correct and complete and that she understood the penalties for providing false information or breaking the rules. The notice sent by the county directed the Respondent to contact them if any of the information was incorrect. (Exhibit 4)
5. There is no indication the Respondent contacted the agency to correct any of the information in her January 4, 2012 renewal. (See Exhibit 8)
6. On June 4, 2012, the Respondent completed an on-line ACCESS renewal, in which she again reported having no income. The renewal contained a penalty warning, advising the Respondent that she could be disqualified from the FoodShare program for providing false information. The Respondent electronically signed the application, certifying under penalty of perjury that the information she provided was correct and complete and that she understood the penalties for providing false information or breaking the rules. (Exhibit 5)
7. On August 15, 2012, the Respondent completed an on-line ACCESS application in which she again reported having no income. The application contained a penalty warning, advising the Respondent that she could be disqualified from the FoodShare program for providing false information. The Respondent electronically signed the application, certifying under penalty of perjury that the information she provided was correct and complete and that she understood the penalties for providing false information or breaking the rules. (Exhibit 6)
8. The Petitioner obtained employment at a carpet cleaning firm on July 8, 2011, and received her first paycheck on July 23, 2011. She ended her employment there on November 3, 2012, which is when she received her last paycheck. She worked an average of 19.5 hours per bi-weekly pay period and earned \$7.25 per hour. (Exhibit 2)
9. On June 30, 2016, Marinette County prepared an Administrative Disqualification Hearing Notice, alleging that the Respondent failed to report her employment in her applications and renewals on July 13, 2011, January 14, 2012, June 4, 2012 and August 15, 2012. (Exhibit 10)

DISCUSSION

Respondent's Non-appearance

The Respondent did not appear for this hearing. This circumstance is governed by the regulation in 7 C.F.R. §273.16(e)(4), which states in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the household member being represented. ***Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional program violation was committed based on clear and convincing evidence.*** If the household member is found to have committed an intentional program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct a new hearing. In instances where the good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, *the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.*

Emphasis added

The hearing in this case took place on August 4, 2016. The Respondent was advised of the date and time of the hearing, in an Administrative Disqualification Hearing Notice that was sent to her at an address in Peshtigo. According to [REDACTED], this was the Respondent's last known address and the agency did not receive any returned mail.

The Respondent did not appear at the hearing, so it proceeded in her absence. The Respondent did not contact the Division of Hearings and Appeals within 10 days of the hearing to explain her absence. It is found that the Respondent did not have good cause for her non-appearance.

What is an Intentional Program Violation?

7 C.F.R. §273.16(c) states that Intentional Program Violations “shall consist of having intentionally: 1) Made a false or misleading statement or misrepresented facts; or 2) Committed an act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization card or any other reusable documents used as part of an automated delivery system (access device).”

The Department's written policy restates federal law, below:

3.14.1 IPV Disqualification

7 CFR 273.16

A person commits an Intentional Program Violation (IPV) when s/he intentionally:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts; or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or

4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

FoodShare Wisconsin Handbook, §3.14.1.

The agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household. If disqualified, an individual will be ineligible to participate in the FS program for one year for the first violation, two years for the second violation, and permanently for the third violation. However, any remaining household members must agree to make restitution within 30 days of the date of mailing a written demand letter, or their monthly allotment will be reduced. 7 C.F.R. §273.16(b).

What is the Agency's burden of Proof?

In order for the agency to establish that a FoodShare recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit an intentional program violation per 7 C.F.R. §273.16(e)(6).

"Clear and convincing evidence" is an intermediate standard of proof which is more than the "preponderance of the evidence"(a.k.a. "more likely than not") used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases.

In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

Wisconsin Jury Instruction – Civil 205 is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that "yes" should be the answer because of its greater weight and clear convincing power. "Reasonable certainty" means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the "middle burden." The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that "it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable." 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4th ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction as to the existence of each of the two elements even though there may exist a reasonable doubt that the elements have been shown.

The Merits of the Agency's Case

In the case at hand, the county agency asserts that the Petitioner committed an IPV by lying in her applications and renewals when she claimed to have no income.

Exhibits 3, 4, 5 and 6 are reliable as statements of a party opponent and establish that the Petitioner told the agency that she had no income. Exhibit 2, is reliable as a regularly kept record of the county/department of health services, and establishes that the Petitioner was, in fact, employed and or receiving income from her employment during the time in question.

Consequently, it is found that the agency has met its burden to prove, by clear and convincing evidence, that the Respondent lied in her applications and renewals on July 13, 2011, January 4, 2012, June 4, 2012 and August 15, 2012, when she claimed to have no income.

Intention is a subjective state of mind to be determined upon all the facts, Lecus v. American Mut. Ins. Co. of Boston, 81 Wis.2d 183 (1977), but there is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See John F. Jelke Co. v. Beck, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. There is no evidence to rebut the presumption that the Respondent intentionally lied. On the contrary, her applications and renewals contained penalty warnings that advised the Respondent of the consequences of providing false information, but she did it anyway.

CONCLUSIONS OF LAW

1. The Respondent violated, and intended to violate, the FS program rule requiring her to provide truthful information about her income.
2. The violation specified in Conclusion of Law No. 1 is the first such violation committed by the Respondent.

NOW, THEREFORE, it is

ORDERED

That Marinette County may make a finding that the Respondent committed a first IPV of the FoodShare program and disqualify the Respondent from the program for one year, effective the first month following the date of receipt of this decision.

REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

APPEAL TO COURT

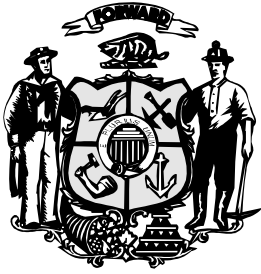
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of August, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals

c: Bay Lake Consortium - email
Public Assistance Collection Unit - email
Division of Health Care Access and Accountability - email
[REDACTED] - email



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAMail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on August 23, 2016.

Marinette County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability
[REDACTED]@marinettecounty.com